IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1548 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LALITKISHORE OMPRAKASH ARYA

Versus

STATE OF GUJARAT AND ANOTHER

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Appearance :
MR AD SHAH for THE Applicant.
MS MANISHA LAVKUMAR, ADDL. PUBLIC PROSECUTOR for Respondent No.1.
MR SI NANAVATI of NANAVATI & NANAVATI for Respondent No.(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 14/12/2005

ORAL JUDGMENT

1. By filing this petition under Article 226 of the Constitution of India and under section 482 of the Code of Criminal Procedure, the petitioner

has prayed for quashing F.I.R. registered as CR No. I – 166 of 2005 at Waghodia Police Station for offences punishable under section 379 read with section 114 of the Indian Penal Code on the ground that police cannot investigate the offence which relates to documents on the basis of which decree was passed by a Civil Court.

2. This case has a chequered history, and the facts narrated in a nutshell are as under:

3. The complaint is filed by respondent No.2 herein, a copy of which is produced at Annexure 'A' to the application at pages 25 to 30 of the compilation. The complaint is filed against one Ahmedhussain alias Balubhai Moghalgara. As per the averments in the complaint, the complainant is serving as Purchaser Manager with Dodsal Private Limited, a Company having its main office at Mumbai. As per the allegations in the complaint, the Company is taking contract for the purpose of construction of roads as well as laying underground pipeline. The Company has taken on lease land belonging to Bhaniyara Cotton Society at Village Bhaniyara, Tal. Vaghodia for the purpose of keeping machinery, spare parts and other articles relating to the projects of the said Company. There is also an office of the Company at the said place and one Manojkumar Pathak was working as Stores Keeper there. There is a fencing and a gate at the aforesaid place and there is also a security guard, a gunman and supervisor who are protecting the said property of the Company. The Company had decided to sell scrap in connection with its three stockyards, at Samlaya, Bhaniyara and Mota Motipura. Initially the Company had issued tender for the purpose of sale of the said scrap which was subsequently cancelled, and decided to sell the same to accused No.1

for Rs.1 Crore. During the period between January 2001 and March 2001, Rs.95 lakhs were paid to the Company and the said Ahmedhussain alias Balubhai Moghalgara had taken away scrap from the Samlaya Stockyard of the Company as per the list. A Civil Suit is filed in the Court of Civil Judge, Baroda being Special Civil Suit No. 196 of 2005 by the applicant herein [Lalitkishore Omprakash Arya] against Ahmedhussain alias Balubhai Moghalgara as owner of M. Steel Corporation. It is alleged in the complaint that the parties of the suit obtained an order dated 30.4.2005 from the Court to take away scrap material as per the list from the site of the complainant and accordingly, the accused came with truck and some persons, and by using cranes loaded scrap material in the truck and had taken away scrap from the site of the complaint, not only as per the list but also some other material also as narrated in the complaint. It is alleged in the complaint and machinery, pipes, spares parts etc. worth Rs.60 lakhs had thus been taken away by the accused between 1.5.2005 to 5.5.2005 from Bhaniyara Stockyard of the Company. On the aforesaid basis, complaint has been filed for offences punishable under section 379 read with section 114 of the Indian Penal Code against both the accused. The said complaint is under police investigation.

4. Learned senior advocate Mr. S.I. Nanavati for Dodsal Pvt. Ltd., submitted that even though the Company was not a party to the civil suit, within few days of filing the suit, a consent decree has been obtained by the accused No.2 against the accused No. 1 in collusion and material lying at the stockyard of the Company was taken away and, therefore, the Company has filed the aforesaid complaint at Annexure 'A' which is under police investigation.

5. The Investigating Officer at the time of investigating the said case submitted an application before the learned Magistrate on 30th May 2005 wherein a report has been submitted by the Investigating Officer that the accused wanted to cheat the complainant Company and for that purpose, bogus documents have been prepared in order to misguide the Court before which the said document has been produced. The investigating officer, therefore requested the Court to delete section 379 and instead add sections 120-B, 420, 465, 467, 468 and 471 of the Indian Penal Code. It is pertinent to note that the learned Magistrate has not yet accepted the said report of the Investigating Officer and it is an admitted fact that section 379 is still retained. The Investigating Officer thereafter gave another application on 23.8.2005 pointing out to the learned Magistrate that during investigation, it is found that offences punishable under section 414 has also been committed, and therefore, that section may also be permitted to be added in the FIR. All these application are pending before the learned Magistrate for consideration. It is at this stage that the present application is filed by the original accused No. 2on the ground that since the petitioner has taken away the scrap in question by virtue of decree of the civil court, police has no jurisdiction to investigate in connection with the offence punishable under section 120-B, 420, 465, 467, 468 and 471 of the Indian Penal Code.

6. Mr. A.D. Shah, learned advocate for the applicant -original accused No.2 submitted that reading the complaint, it cannot be said that offence punishable under sections 420, 465, 467, 468, 471 and 414 of the Penal Code is disclosed as the complaint nowhere disclosed any

willful misrepresentation which dishonestly induced the complainant to part with the property. It is submitted that so far as sections 465, 467 and 468 of the Indian Penal Code are concerned, they deal with forgery. The civil suit filed by the accused is based on agreement between the petitioner and the accused No.1 and the said agreement cannot be termed as a forgery as per section 460 of the IPC. It is submitted that when the police has submitted an application foe deletion of section 379, the provisions of sections 414 cannot be made applicable and it cannot be said that the petitioner is in possession of stolen property as the property is lifted pursuant to a judicial order and a decree passed in favour of the petitioner-accused. Mr. Shah further submitted that so far as facts of the offence for which sections 420, 465, 467, 468, 471 and 414 of the Penal Code, it would only attract sections 208, 209 and 210 of the Penal Code which are covered under section 195 of the Criminal Procedure Code and that no court can take cognizance except on complaint in writing of the Court or of some other court to which the court is subordinate. It is submitted that the facts emerging from the report of the Investigating Officer prima facie discloses offence punishable under sections 208, 209 and 210 of the Indian Penal Code which are non-cognizable offences and bailable offences and police has no power to investigate the same. It is, therefore, submitted that the FIR is required to be quashed and appropriate writ, order or direction is required to be issued in this behalf quashing and setting aside the FIR and all subsequent proceedings carried out by the police on the basis of the FIR.

7. On behalf of the original complainant, learned senior counsel Mr. S.I. Nanavati submitted that the petitioner, with the help of accused

N.2 has committed a great fraud and has taken away properties of the Company under the guide of decree of the court in Special Civil Suit No. 196 of 2005. He submitted that a bare perusal of the plaint indicates that the suit is filed in the year 2005 for a cause of action which occurred in 2001. He submitted that even if it is assumed that the claim is genuine, it was clearly time barred. He further submitted that the petitioner original accused No. 2 filed the suit against the present accused No.1 for recovery of goods wroth Rs.1,11,00,000/-. The said suit was filed on 19th April 2005. The defendant [accused No.1] appeared on 21.4.2005. On the same date, a consent purshis was filed. 22nd April to 24th April were holidays. The trial Court passed the decree on 26th April 2005. The complainant was not made party in the aforesaid suit. Yet, the accused removed the goods from the stockyard of the complainant which was not at all a party to the suit. As regards the factual background, Mr. Nanavati submitted that on 10.1.2001, accused No.1 made an offer for purchase of scrapped machines specifying make, model, capacity, year of manufacture, machine number etc. lying at Samlaya Stockyard of the complainant for Rs.65,92,000/-. On 18.1.2001, after negotiations between the complainant and the accused no.1 the price was fixed at Rs.1,00,00,000/- and it was agreed that the accused No.1 should lift the scrap on or before 22.1.1001. On 19.1.2001, accused No.1 paid Rs.95 lakhs to the complainant and lifted the material during the period between 16/2/2001 to 31.3.2001 and the said contract, according to the complainant, came to an end. Mr. Nanavati further submitted that in spite of this, on 5.9.2003, the accused No.1 filed Regular Civil Suit No. 898 of 2003 praying to restrain the complainant from disposing of the scrap lying at Bhaniyara stockyard on the basis

of his offer dated 26.6.2002 for which no agreement took place at any point of time. The complainant appeared and filed its reply stating that the complainant had not received any offer from the accused No.1 for sale of scrap lying at Bhaniyara stockyard. During the pendency of the suit, on 2.9.2004 the accused No. 1 filed another Special Civil Suit No. 435 of 2004 along with an injunction application seeking relief that the scrap machines and other scrap materials lying at Bhaniyara, Samalaya and Mota Motipura stockyards of the complainant should be allowed to be lifted by him. On 3.9.04 the trial Court granted exparte status quo in Spl. C.S. NO.435 of 2004. On 9.9.04 the accused No.1 withdrew the previous suit being Regular Civil Suit No.898/03 on the ground that he has filed another suit [i.e. Special C.S. No. 435/04]. Mr. Nanavati submitted that in both these suits accused No.2 was not joined as party and it was also not stated that the accused No.1 has sold the goods to accused No. 2 on 18.1.2001. In Special C.S. No. 435 of 2004, the complainant filed written statement opposing status quo order and against injunction application. On 11.10.2004, learned Civil Judge Senior Division Vadodara vacated the status quo order and rejected Exh. 5 application filed by the accused No.1. The accused No.1 preferred Appeal from Order before the High Court which was allowed to be withdrawn on 25.10.2004 with certain observations. The said Civil Suit No. 435 of 2004 is still pending. Subsequently, as stated above, on 19.4.2005 accused No.2 filed Civil Suit No. 196 of 2005 against the accused No.1, filed a joint compromise purshis and obtained a decree from the trial Court on the basis of which scrap was lifted from the Bhaniyara stockyard of the complainant.

8. It is interesting to note that the accused No.2 [present petitioner]

has filed Civil Suit No. 196 of 2005 on the basis of the so called agreement entered into between him and accused No.1 on 18.1.2001, i.e. after about four years. The suit, as stated above, is filed on the basis of so called agreement executed between the accused No.1 and 2 and within few days decree is passed and scrap valuing huge amount is lifted from the stockyard of the complainant who was not at all a party to the suit. It is the aforesaid act of the accused which is complained of in the aforesaid complaint.

9. Both Mr. S.I. Nanavati and Ms. Manisha Lavkumar, APP, has demonstrated as to how the petitioner, accused No.2, has defrauded the complainant, how proceedings were initiated in the civil court and how the decree was obtained within few days and the material lifted from the stockyard of the complainant which was not a party to the suit. It is submitted by Mr. Nanavati and Ms. Manisha Lavkumar that a serious case is under investigation and this is not a case in which this Court should exercise its extra-ordinary jurisdiction by quashing the FIR at its threshold.

10. It is also submitted by Mr. Nanavati and Ms. Manisha Lavkumar that the accused-petitioner is absconding, and even though the application submitted by the accused for anticipatory bail has been withdrawn, the accused is absconding, and therefore, the extra ordinary powers of this Court under Article 226 should not be exercised in favour of such person who has no regard for the process of law. It is also required to be noted that even this Court passed an order on 2.12.2005 directing the petitioner to remain present before this Court on 7th December 2005. In spite of the order passed by this

Court, the petitioner has not remained present and Mr. A.D. Shah, learned advocate for the petitioner also submitted that he is not in a position to secure his presence. Considering the aforesaid conduct, I am of the view that this is not a case in which any relief can be granted to the petitioner by exercising its extra ordinary jurisdiction to a person who is absconding and who has no respect for the law of the land by not remaining present in spite of the order passed by this Court.

11. In spite of this, this Court has considered the merits of the submission of Mr. Shah. Mr. Shah has mainly contended that the police has no right to investigate the said offence and FIR is required to be quashed at the threshold.

12. Various civil suits have been filed in connection with the disputes between the parties. The application of the present petitioner for anticipatory bail was withdrawn. For the alleged cause of action in 2001, a civil suit is filed in 2005 and decree is obtained in few days and by virtue of the decree, scrap valuing huge amount is lifted from the stockyard of the complainant who was not at all a party to the suit. It is also required to be noted that over and above the materials prescribed in the list annexed to the decree, additional material of the complainant have also been taken away by the accused and therefore police is investigating offence punishable under section 379 of the IPC. It is also required to be noted that though police had initially given an application to delete section 379, another application is given by the police to the effect that the said section is also required to be retained. Therefore, the police is still investigating the offence punishable under section 379 along with other offence. Against the so called consent

decree, appeal is filed which is admitted and this Court has granted stay of execution and operation of the decree.

13. As regards the submission of Mr.Shah that since police is investigating offences punishable under section 465, 467, 468 and 471 of the IPC is concerned, it is required to be noted that the application filed by the investigating officer before the trial Court has not yet been allowed. It is also required to be noted that the police is investigating offences punishable under sections 379 and 420 of the IPC. It is the case of the complainant that material worth huge amount in excess of the so called decree is taken away by the accused. In this connection, it is pertinent to quote the following paragraphs from the affidavit of the Investigating Officer:

> "8. It is humbly submitted that on 30.05.2005, a report was made by the I.O. to the J.M.F.C. Waghodia to correct the sections of the offence from IPC 379, 114 to IPC 120B read with IPC 420, 465, 467, 468, 471 etc. However, on further investigation, muddamal related to the offence were recovered from various sites in the month of June 2005. A survey of the muddamal shows that, out of 1742 items recovered by the police, only 98 items are those that are mentioned in the fraudulent consent decree obtained from the civil Court. The fraudulent consent decree mentions 214 items out of which 116 items are yet to recovered. As revealed during the investigation the accused have totally taken 2380

items of scrap machinery, out of which 1742 items have been recovered by the police, and 638 are yet to be recovered. Even assuming that the fraudulent consent decree is undisputed, the accused have dishonestly taken away 2166 items more that what is mentioned in the decree of which 1644 of these extra items (not mentioned in the fraudulent decree) has been recovered by the investigation. It is pertinent to note that the accused have even taken items like furnitures, cupboards, fridge and air conditioners from the shed situated at the premises of the Bhaniyara yard, out of which some furniture, cupboard, refrigerators, typewriters and computer CPU and printer have been recovered. These items are clearly not scrap machinery. Either way one looks at it, IPC 379 is clearly made out as is reinforced by subsequent investigation. It is therefore further submitted that on completion of investigation, charge sheet would be filed under relevant sections of law, including that of theft. Moreover investigation of the said case is still pending and charge sheet is yet to be filed. It is relevant to note that only after the final police report, the magistrate competent to try the case will decide the appropriate sections of law that are attracted in the case, at the time of framing of the charge.

9. It is further submitted that the conduct of the accused reinforces the charges against them. After

obtaining the fraudulent decree, they have removed the scrap materials from the Bhnaiyara in undue haste without any executive order from M/s. Dodsal Company. The accused along with a contingent of 100 to 150 persons had come on a Sunday to the Bhaniyaua site of the M/s. Dodsal Company,broke open the lock of the main gate, entered the premises without consent and lifted the materials from the site, working night and day for 4 to 5 consecutive days. This conduct shows clearly that the decree was obtained fraudulently and under its guide they are dishonestly removing the materials from the site.

10. It is further submitted that from the papers of investigation, it reveals that the present applicant under the guise of the order and decree passed by the learned Civil Judge, Senior Division dated 21.05.2005 has lifted the material of iron scrap from the godown situated at bhaniyara of M/s. Dodsal Private Limited Company. That from the papers of investigation it reveals that there was no agreement between M/s. M.A. Steel Company and M/s. Dodsal Private Limited Company about the sale of material [scrap], which was lying at the godown situated at Bhaniyara. That M/s M.A. Steel Company and Dodsal Private Limited Company has entered into an agreement on 18.01.2001 about the sale of the scrap which was lying at Samalaya godown only. It is further revealed from the papers of investigation that

the aforesaid agreement was entered into between M/s.M.A. Steel Corporation and Dodsal Private Limited Company on 18.01.2001 and the proprietor of M/s/ M.A. Steel has already lifted the material from the said godown upto March 2001 and it was sold to two different parties namely Fiayaz Khan alias Chittu bhai Maula Khan Pathan and Rabbani Usman Ghani Qureshi, whose statement have been recorded during the investigation. However, in pursuane of the conspiracy the accused have created a bogus agreement dated 18.01.2001 between M/s. M.A. Steel and M/s. Astha trading Company by which the said material was sold for a consideration of Rs.1.11 Crores to M/s. Astha Trading Company. It is relevant to note that though the bogus agreement was entered into between the present applicant as the proprietor of M/s. Astha Trading Company and the co-accused Mr. Ahmedhusen @ Balubhai Mogalgara, the proprietor of M/s M.A. Steel Corporation, the payment receipts, which was passed on by the co-accused Mr. Ahmedhusen @ Balubhai Mogalgara to M/s. Astha Trading Company were dated 01.12.2000 for Rs.30 Lacs, 5.12.2000 for Rs.45 lacs and 20.12.2000 for Rs.30 Lcas respectively, which is well before the date of the agreement between M/s. M.A. Steel Corporation and M/s. Dodsal Private Limited on 18.01.2001.

11. Investigations have revealed that the firm

of the accused petitioners, namely M/s. Astha Trading Company, is non-existent, and that the company is a fictitious company. Papers showing the address of the said firm are also bogus.

12. Investigation so far has revealed that the wife of the accused petitioner has given a statement to the effect that her husband is a Doctor and is having his clinic at Padra, and that he is not dealing in the business of scrap. The records of Income Tax Depatt. Also reveal that accused petitioner has not shown any transaction of Rs.1.11 Crores in the year 2001 in the I.T. Return filed by him. There is no registration with the Sales Tax Department of M/s. Astha Trading Company on the given address in the year 2001.

13. As the investigation was revealing involvement of other accused in the case with regard to concealment and disposal's of the stolen property, section 414 IPC was applied by the I.O. vide his report dt. 23.08.05."

14. It is required to be noted that investigation is still at large and statement of the petitioner is yet to be recorded as he is absconding. Whether the so called agreement of 2001 is fabricated or not is a question which the police will have to consider at the time of investigation as according to Ms. Manisha Lavkumar, learned Additional Public Prosecutor, the so called agreement is of 2001 and the suit is filed after about 4 years, and, therefore, forged document is prepared prior to filing of the suit. It is for the police to to investigate

into the genuineness of the documents as the same is prepared prior to filing of the suit. In my view, looking to the complex question of facts involved in the matter, and when the police is also inquiring into an offence punishable under section 379 of IPC, it will not be just and proper to stall the investigation at this stage. Ultimately, after the investigation is over, it will be for the learned Magistrate to take an appropriate decision. Looking to the facts of the case, it is too premature a stage to quash police investigation restraining the police from investigating regarding part of the offence or allowing the police to investigate only part of the offence.

15. Mr. A.D. Shah relied on the following judgments:

1. STATE OF GUJARAT vs. M.J. MAKWANA, 1992 (2) GLH 306.
2. STATE VS. MAGANBHAI JIVRAMDAS & ANR., 1984 GLT 21
3. ASHOK CHATURVEDI vs. SHITUL H. CHANCHANI, AIR 1998 SC 2796
4. MOHINI HEMANT JADIA vs. HEMANT GHANSHYAMLAL JADIA, 2002 (9) SCC 767
6. STATE OF WEST BENGAL vs. SWAPAN KUMAR, AIR 1982 SC 949
7. STATE OF HARYANA vs. BHAJAN LAL, AIR 1992 SC 604
8. BASIR-UL-HUQ vs. STATE OF WEST BENGAL, AIR 1953 SC 293
9. DUTT vs. STATE OF UP, AIR 1966 SC 523
11. M.S. AHLAWAT vs. STATE OF HARYANA, 2000(1) SCC 278
12. N.NATARAJAN vs. B.K. SUBHA RAO, AIR 2003 SC 541
13. M. NARAYANDAS VS. STATE OF KARNATAKA, 2004 SCC [Cri.] 118.

16. So far as the aforesaid judgments are concerned, it is no doubt true

that this Court can quash the proceedings if no offence is made out or if the police has no jurisdiction to investigate the case. However, so far as the facts of the present case is concerned, as stated earlier, police is also investigating offence punishable under section 379, IPC. Even Mr. Shah also fairly submitted that so far as offence punishable under section 379 is concerned, the police can investigate the same as per law. Looking to the complex facts of the case, in my view, it will not be proper to direct the police to investigate into only the part of the allegations qua offences punishable under section 379 and restrain them from investigating into the other allegations of the same complaint. It is in the interest of justice to investigate into the complaint as a whole. Ultimately, after the investigation is over, the police can file its report in accordance with law. Looking to the complexity of the facts of the case, the present case has some distinctive features – one person files a suit against another for a cause of action that ostensibly arose 4 years ago, obtains a consent decree within few days of filing the suit, use the consent decree for lifting material from the premises of another party who is altogether alien to the suit; and, as against 214 items mentioned in the consent decree, take away 2166 items more than what is mentioned in the consent decree. Such is not the facts in any of the cases relied upon! And the distinctive features of the instant case does not end there – anticipatory bail application is withdrawn, yet the accused does not appear before the police; the court directs the accused to remain personally present before the Court and yet the direction of the court is flagrantly violated. From any of the judgments cited, Mr. Shah could not point out any case law that even in such gross cases, the Court should exercise its extra-ordinary powers under Article 226 of the

Constitution of India or inherent powers under section 482 of the Criminal Procedure Code, to quash the complaint at the threshold from its inception. On the contrary, the observations in the cases cited by Mr. Shah goes against him. Even going by the judgments cited, it says that the court must decide the genuineness of the document; that if an offence is disclosed, the High Court will not normally interfere with investigation into the case and will permit investigation into the alleged offence; that allegations in the compliant constitutes to a cognizable offence, and therefore cannot be quashed; that power to quash complaint must be exercised very sparingly, with circumspection, and in rarest of the rare cases, and Court cannot inquire into reliability, genuineness or otherwise of the allegations made in the FIR. As regards intention to defraud, as the accused lifted even more quantity than what was mentioned in the so called decree, intention to defraud is evident thereupon. In the facts of the case, the complaint cannot be said to be strictly dealing with only the offence committed in relation to the proceedings in the Court, but the complaint spells out not only using the decree against someone who was not party to the suit, but also lifting more material than even what is mentioned in the decree. After the investigation is over, the concerned Magistrate may not even accept the report of the police. It is ultimately for the learned Magistrate to consider all these aspects.

17. Learned Additional Public Prosecutor, Ms. Manisha Lavkumar submitted that since the document in question is prepared before even the suit was filed and out of the Court and since it was prepared with a view to defraud the Company, and it was presented before the Court not with an intention to defraud the Court but with an intention to

defraud the complainant, the bar under section 195 is not applicable in the present case. There is much force in the said submission. However, ultimately, during the investigation, it is required to be found out when the document was prepared. Since the matter is under investigation, this Court is not inclined to give any finding on this aspect at this stage. As and when the investigation is over, it is for the learned Magistrate to consider all these aspects. Considering the fact that the police is investigating offence punishable under section 379, IPC along with other offences and considering the fact that the petitioner is absconding and not even remaining present to co-operate with the investigation, this is not a case in which this Court would like to intercept with the investigation. This case cannot be said to be "rarest of the rare case" in which this Court would like to exercise its extraordinary or inherent powers to quash the FIR or police investigation at this stage. This Court is not required to make a rigorous inquiry into all these questions at this stage. Even defence of the accused also cannot be considered at this stage.

18. Even otherwise, the contention of bar under section 195 pressed into service by learned advocate Mr. A.D. Shah is of very little help to him in view of the following observations of the Supreme Court in paragraph 8 in M. NARAYANDAS vs. STATE OF KARNATAKA reported in 2004 SCC (Cri) 188, which is reproduced below:

> "Sections 195 and 340 do not control or circumscribe the power of the police to investigate under the Criminal Procedure Code. Once investigation is completed then the embargo in Section 195 would come into play and the court would not be competent to take cognizance.

However, that Court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation provided the procedure laid down in Section 340 of the Criminal Procedure Code is followed."

19. Thus, there is no merit in the submission of Mr. Shah that the police cannot investigate into the complaint in view of the embargo in section 195.

20. Mr. Nanavati tried to demonstrate as how the alleged agreement entered into between the accused are, on the face of it, concocted and bogus. However, since the said material is subject matter of civil dispute, I would not like to comment on this issue at this stage.

21. Mr. S.I. Nanavati, learned advocate for the respondent No.2 relied on the following judgments:

1. STATE OF MADHYA PRADESH vs AWADH KISHORE GUPTA, AIR 2004 SC 517
2. STATE OF ANDHRA PRADESH vs. GOLOCONDA LINGA SWAMY, AIR 2004 SC 3967

22. Ms. Manisha Lavkumar, learned APP relied upon the following judgments:

1. IQBAL SINGH MARWAH vs. MEENAKSHI MARWAH, 2005 SCC [CRI] 1101
2. K. VENGADACHALAM vs. K.C. PALANISWAMY, 2005 SCC [CRI] 1673
3. S,M, DATTA vs, STATE OF GUJARAT, AIR 2001 SCW 3133

4. RAHESH BAJAJ vs. STATE NCT OF DELHI, AIR 1999 SC 1216
5. N.B.N. PATHAN vs. STATE OF GUJARAT, 2004(1) GLH 569

23. I do not consider it necessary to deal with each of the judgment to substantiate the say that the Court may not intercept with the investigation at this stage. However, in view of what is stated above, in my view, even otherwise, considering the nature of the dispute involved and the nature of the fact, and in view of the fact that the petitioner is not co-operating with the investigation and is absconding, even though anticipatory bail application is withdrawn, it is not a case in which this Court would like to exercise its extra ordinary jurisdiction by way of quashing the complaint. Even otherwise also, at this stage, in view of the aforesaid discussion, the complaint is not required to be quashed.

24. It is required to be noted that looking to the complexity of the issue involved in the matter as well as considering the fact that at present police is also investigating offences under section 379 read with section 114 of the Indian Penal Code, this is not a case in which the investigation is required to be quashed at the threshold. Considering the judgment of the Supreme Court STATE OF M.P. vs. AWADH KISHORE GUPTA, (2004) 1 SCC 691 normally this Court would not prevent the police from carrying out investigation subject to certain limitation. It is required to be noted that from the material produced on record, it primafacie appears that the petitioner tried to be smart and with the help of M. A. Steel Corporation, has tried to defraud the complainant, which is not concerned with the transaction in question or the so called agreement executed by M.A. Steel Corporation.

Further, reading the complaint also, it is clear that the suit is filed in the year 2005 for a cause of action which occurred in 2001 and the same is decreed on 26.4.2005 on the basis of the so called compromise purshis jointly executed on 21.4.2005. Even in the cause of action, nothing is stated as to how the suit is brought after three years. The way in which the decree is passed itself reflects on the conduct of the parties. The learned trial Judge ought to have taken several vital aspects into consideration before passing such a decree. However, since the complaint is under investigation, it would not be proper to make any observation which might affect the case of the parties either way. Suffice it to say that this is not a case in which investigation is required to be quashed. Even otherwise, in spite of the order of this Court, the petitioner has not even appeared before this Court. Even though his anticipatory bail application is withdrawn, he has not appeared before the police, and according to Ms. M.L. Shah, learned Additional Public Prosecutor, since the petitioner is absconding, notification to that effect is published. Neither extra-ordinary powers under article 226 of the Constitution nor inherent powers under section 482 of the Cr. P.C. can be exercised in favour of a person who is absconding, who is not co-operating with the investigation and who has no regard for law of the land and judicial orders. It is also required to be noted that at present the police is investigating offence under section 379 as according to the complainant the accused have taken away more goods than what was mentioned in the so called decree and this is also required to be investigated by the police. Since the investigation is at large, and since the accused is absconding, which fact is not in dispute, the powers of this Court cannot be exercised in favour of such person even if some attractive arguments

have been made on his behalf. Power to quash complaint can be exercised very sparingly and with circumspection and that too in the rarest of rare cases. This case cannot be at all termed as as case coming within the four corners of “rarest of rare cases”. At this stage, the Court cannot inquire about reliability or genuineness or otherwise of the allegations made in the FIR and the Court also has no power to inquire whether the allegations are likely to be established or not. Defence of the accused also cannot be considered at this stage. If, after investigation, no case is made out, appropriate report will naturally be filed before the concerned Magistrate. If a case is made out, the police will file charge sheet and thereafter, it will be open to the petitioner to either file an application for discharge or file a petition for quashing the case at an appropriate stage. Normally, this Court would not exercise its powers when a person is not coming with clean hands, absconding or flout the orders of the Court or do not remain present before the Court inspite of an order to that effect. I am of the view that neither extra-ordinary powers nor inherent powers of this Court is required to be exercised in favour of such a person. As observed by the Supreme Court in STATE OF GUJARAT vs. SALIMBHAI ABDULGAFFAR SHAIKH, (2003) 8 SCC 50, inherent powers of the High Court are to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. The power has to be exercised to prevent abuse of the process of the court or to otherwise secure the ends of justice. Considering the aforesaid aspects, this is not a case in which FIR is required to be quashed, more particularly looking to the chequered history and complexity involved in the matter. Police is directed to expedite the investigation.

25. In view of what is stated hereinabove, the petition is dismissed. Notice is discharged. It is clarified that the observations made in this order be treated as tentative in nature and since investigation is at large and as the civil proceedings between the parties are pending, the observations made should not come in the way of either party and it is clarified that the observations made are only for the purpose of deciding this petition.

[P. B. MAJMUDAR, J.]

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